UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

G4S SECURE SOLUTIONS (USA) INC.

and Case 19-CA-221172

WASTE TREATMENT PLANT
SECURITY GUARDS UNION 161

RESPONDENT G4S SECURE SOLUTIONS (USA) INC.'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE AND ARGUMENT IN SUPPORT OF EXCEPTIONS

Respondent G4S Secure Solutions (USA) Inc. ("Respondent" or "G4S") submits the following Exceptions to the Decision of Administrative Law Judge ("ALJ") Eleanor Laws dated March 25, 2019 ("ALJD"):

Exception No. 1:

The ALJ erred when she stated that the settlement agreement in Case 19-CA-191814, a prior case in which Respondent was not involved, was between "the Union and, ***as joint employers***, Securitas Services and Bechtel, approved by the Regional Director for Region 19 on on December 21, 2017." (ALJD at 5, lines 42-44 (emphasis added).)

Argument in Support:

The ALJ's above-quoted statement is incorrect as a matter of fact, and misleading in that it suggests that there was any sort of admission. acknowledgement and/or adjudicatory determination in Case 19-CA-19184 that Bechtel National, Inc. ("Bechtel") and Securitas Services USA, Inc. ("Securitas") were joint employers. As an initial matter, Bechtel was not even a party to that settlement agreement. (Joint Exhibit ("Jt. Exh.") G at 3 (not counting blank

pages inserted into the exhibit).) As such, the settlement agreement was between the Union and Securitas, not between the Union and ***Bechtel*** in any capacity, much less as a joint employer of Securitas. Further, there is nothing in the settlement agreement that states or indicates that Securitas executed the agreement as a "joint employer" of Bechtel or in any manner other than on behalf of itself and itself alone. (*Id.*) Moreover, it is explicitly stated in the settlement agreement that "the Charged Party [Securitas] does ***not*** admit that . . . that it is a joint employer with Bechtel National, Inc." (Jt. Exh. G at 1 (emphasis added).) The only other reference in the settlement agreement to "joint employers" was in the case caption, presumably because such was the allegation in the charge filed by the Union in that case. As such, it was erroneous for the ALJ to state or conclude that the settlement agreement in Case 19-CA-191814 was between the Union and, as joint employers, Bechtel and Securitas.

Exception No. 2: The ALJ erred when she stated that the Division of Advice in the September 5, 2017 Advice Memo issued in Case 19-CA-191814 "opin[ed] that Bechtel had been a joint employer with Securitas Services back in 2016" and that the "advice memo also discussed Bechtel's control over the terms and conditions of the unit employees' employment with predecessor Securitas Services." (ALJD at 6, lines 1-6.)

Argument in Support:

The Division of Advice at no point in the referenced advice memo offered any opinion on whether Bechtel and Securitas were joint employers in 2016 or any other time. (Jt. Exh. H.) As set forth in the advice memo, the issue presented to the Division of Advice was not whether Bechtel was a joint employer of Securitas, but whether the Union had waived the right to bargain with Bechtel as a purported joint employer. (*Id*. at 1.) In addressing that issue, the Division of

Advice recited the Region's investigative findings that led to the Region's issuance of complaint in that case, by way of the history and background surrounding the issue being presented to the Division of Advice. Other than the Region's decision to issue complaint on the basis of its investigative findings, however, there never was any decision in that case (by the Division of Advice, much less any adjudicator) that Bechtel and Securitas were joint employers. Nor was the Division of Advice trying to resolve that issue. On the contrary, the Division of Advice made it clear that the issue of joint employer status was still an open issue. As the Division of Advise in the advice memo explicitly stated, "We further conclude that the failure to name Bechtel as a joint employer will not deprive Bechtel of due process . . . because Bechtel has received timely notice of its ***alleged*** joint employer status and ***will continue to have an opportunity to challenge that allegation*** in the instant unfair labor practice proceedings." (Jt. Exh. H at 6 (emphasis added).) Thus, the ALJ was wrong as a matter of fact when she concluded that the Division of Advice opined that Bechtel and Securitas were joint employers in Case 19-CA-191814.

Similarly, although the advice memo contained a "discussion" about the relationship between Bechtel and Securitas, that "discussion" was merely a recitation of the alleged facts, as determined by the Region in its investigation and which resulted in issuance of complaint in that case. Presumably, that "discussion" was included simply because it was part of the case presented to the Division of Advice along with the issue presented. But there had been no adjudicatory finding that any of those allegations in that case were true. Yet the ALJ erroneously suggests that the recitation (or "discussion") of the Region's investigatory findings somehow constituted a final, adjudicatory determination that has some bearing on the Union's request for a copy of Respondent's customer contract in this case.

Exception No. 3:

The ALJ erred when she concluded that the Union was entitled to a copy of Respondent's contract with Bechtel because "the Union was on notice that Bechtel was potentially a joint employer with the Respondent, with attendant bargaining obligations." (ALJD at 7, lines 26-27.)

Argument in Support:

The ALJ does not disagree with Respondent's argument that a union generally is not entitled to a copy of an employer's contract with its customer, but apparently concludes that the Union in this case was in a different position because it was "on notice that Bechtel was potentially a joint employer with Respondent." There is no record evidence in this case, however, to support the conclusion that the Union had any more reason to be on such "notice" than any other union curious about the relationship between an employer (including but not limited to a security or other outsourced contractor) and its customer.

The issue in this case is not whether the Union was "on notice" that Bechtel was potentially a joint employer with ***Securitas***, as might have been true in Case 19-CA-191814. There is no record evidence in this case to support a conclusion that whatever facts were present in Case 19-CA-191814 case concerning the relationship between Bechtel and Securitas are present in this case concerning the relationship between Bechtel and G4S. As such, the Union was no more "on notice" of a potential joint employer relationship between Bechtel and ***Respondent G4S*** than any other union that represents the employees of a contractor relative to the contractor's customer.

As far as Respondent has been able to determine, Board law does not allow for a union to go on a "fishing expedition" into the relationship between a contractor and its customer when there is no specific evidence to support a suspicion of a joint employer relationship. Nor did the ALJ cite any decisions in support of such a conclusion. Thus, the ALJ erred in concluding that the Union was on any "sort of notice" that would entitle it to a copy of Respondent's customer contract in this case.

Exception No. 4:

The ALJ erred when she concluded that the Union was entitled to a copy of Respondent's customer contract because the "Union was also on notice that Bechtel exercised control over employees' terms and conditions of employment with the Respondent's predecessor." (ALJD at 7, lines 27-29.)

Argument in Support:

Again, the issue in this case is not whether Bechtel exercised control over the terms and conditions of employment of ***Securitas's*** employees. It appears that may have been one of the issues in Case 19-CA-191814, and which was settled without any admission or adjudicatory finding in that regard. But there is no record evidence in this case that Bechtel exercises control over the terms and conditions of employment of ***G4S's*** employees. As far as Respondent has been able to determine, such allegations against a predecessor employer in another case do not support a union's right to information from a successor employer to which it otherwise would not be entitled. Nor does the ALJ cite to any Board decisions in this regard. As such, the ALJ mistakenly concluded that any notice the Union had regarding any control Bechtel had over

Securitas's employees was any "sort of notice" that would entitle it to a copy of ***G4S's*** customer contract in this case.

Exception No. 5:

The ALJ erred when she concluded that, "[b]y articulating the specific reasons as they related to bargaining for requesting the contract in its May 20 email, and by providing the advice memorandum discussing Bechtel's status and its control over the terms and conditions of predecessor Securitas Services' unit employees, the Union shared this with the Respondent demonstrating relevance." (ALJD at 7, lines 29-33.)

Argument in Support: As an initial matter, the "specific reasons" in the Union's May 20 email to which the ALJ refers are the type of general statements that are ***not*** sufficient to overcome the presumption that a union is ***not*** entitled to such information. As the Board has concluded, "an articulation of general relevance [by the union] is insufficient" to overcome the presumption in such circumstances. *F.A. Bartlett Tree Expert Co.*, 316 NLRB 1312, 1313 (1995) (citation omitted). Similarly, a "union's explanation of relevance must be made with some precision; and a generalized, conclusory explanation is insufficient to trigger an obligation to supply information." *Disneyland Park*, 350 NLRB 1256, 1258 n.5 (2007) (citations omitted).

In its May 20 email, the Union claimed it was entitled to Respondent's customer contract "to ensure the union can assist in meeting said obligations" in the contract between Respondent and Bechtel; for "proper representation of the union members" and because the "entirety of our work is based off this contract and is relevant based [sic]." (Jt. Exhibit E.) As stated above, however, such general statements are not sufficient to meet the Union's burden in this regard.

For example, as the Board explained in *F.A. Bartlett*, "[t]he basis for this request [for the employer's customer contracts], i.e., that the information contained in the contracts is necessary to make a reasonable wage proposal is nothing more than another way of saying that it is needed 'to bargain intelligently' and this general claim is simply insufficient to establish relevance." 316 NLRB at 1313 (citation omitted). Based on the same analysis, none of the generalized, conclusory statements offered by the Union in this case were sufficient to meet the Union's burden to establish the relevance of Respondent's contract with Bechtel. Therefore, it was erroneous for the ALJ to conclude that the reasons provided by the Union demonstrated relevance under the applicable standard.

The ALJ also erroneously concludes that the Union's provision of the advice memo somehow overcame the presumption that the Union was not entitled to a copy of Respondent's customer contract. As explained above, the advice memo did not contain any sort of conclusion or opinion (other than the Region's investigatory findings) that Bechtel and Securitas were joint employers. Nor did the advice memo include any statement that the Union was entitled to a copy of Securitas's contract with Bechtel. Nor did the advice memo contain anything that suggested that a successor employer would be required to turn over its customer contract even if there was an adjudicatory finding that its predecessor was a joint employer of the customer, much less if there were no such adjudicatory finding. As such, like the Union's generalized statements of relevance, the advice memo did not serve to demonstrate that Respondent's contract was relevant where it otherwise would not be.

Exception No. 6:

The ALJ erred when she stated, "[t]he Respondent repeatedly misstates the Union's burden as one of overcoming a presumption of irrelevance for information such as a customer contract. There is no legal presumption of irrelevance for the Union to overcome; the Union must simply establish relevance under the legal standards articulated herein." (ALJD at 7, n.8 (citation to Respondent's post hearing brief omitted).)

Argument in Support:

The ALJ's conclusion in this regard is wrong as a matter of law. As a starting point, the Board outlined the applicable general framework regarding an employer's obligation relative to a union's request for information as follows:

> An employer has the statutory obligation to provide, on request, relevant information that the union needs for the proper performance of its duties as collective bargaining representative. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152 (1956); *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967); *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979). . . . Where the union's request is for information pertaining to employees in the bargaining unit, that information is presumptively relevant and the Respondent must provide the information. However, where the information requested by the union is not presumptively relevant to the union's performance as bargaining representative, the burden is on the union to demonstrate the relevance. *Richmond Health Care*, 332 NLRB 1304 (2000); *Associated Ready Mixed Concrete, Inc.*, 318 NLRB 318 (1995), enfd. 108 F. 3d 1182 (9th Cir. 1997); *Pfizer, Inc.*, 268 NLRB 916 (1984), enfd. 736 F.2d 887 (7th Cir. 1985).

Disneyland Park, 350 NLRB 1256, 1257 (2007) (footnote omitted).

Thus, the threshold issue is whether the information requested by a union is presumptively relevant. An employer's contract with its customer is ***not*** presumptively relevant and, therefore, an employer is ***not*** lawfully obligated to provide a union with a copy of such a contract. For example, as the Board concluded in *F.A. Bartlett Tree Expert Co.*, 316 NLRB 1312, 1312-1313 (1995), "[i]n agreeing with the judge that the Respondent did not violate Section 8(a)(5) and (1) of the Act by

refusing to furnish the Union with copies of all of its customer contracts, as the Union requested, we find that the Respondent's bargaining position did not trigger an obligation to provide them and that the General Counsel has not otherwise shown their relevance." *See also Station GVR Acquisition, LLC*, 366 NLRB No. 175, slip op. at 2, n.6 (2018) (employer lawfully refused to provide its customer contracts to a union because such information concerns matters outside the bargaining unit and, as such, is not presumptively relevant).

It is also well-established that the burden is on a union to overcome the presumption that information like a customer contract is not relevant and, as such, not information to which a union is entitled under the Act. In other words, the burden is on a union to demonstrate that some exception applies to the general presumption of irrelevance for such information. As the Board stated in *Disneyland Park*, 1256 NLRB at 1257, "when the information requested by the union is not presumptively relevant to the union's performance as bargaining representative, the burden is on the union to demonstrate the relevance." *See also F.A. Bartlett Tree Expert Co.*, 316 NLRB at 1313 ("Information that does not directly concern wages, hours, and terms and conditions of employment [which, in that case, was customer contracts] does not enjoy a presumption of relevance, and a specific need for it must be established.").

As such, contrary to the ALJ's conclusion, as a matter of law, a union must overcome the presumption of irrelevance when requesting information that is not presumptively relevant.

Exception No. 7:

The ALJ erred when she stated "the Union has established a need to examine the contract with Bechtel to determine whether it was a potential joint employer, and/or to determine what, if

any, terms and conditions of the unit employees' work the contract covered." (ALJD at 8, lines 1-3.)

Argument in Support:

The ALJ seeks to distinguish several cases Respondent cited in its post hearing brief, *F.A. Bartlett Tree Expert Co.*, 316 NLRB 1312 (1995), and *Station GVR Acquisition, LLC*, 366 NLRB No. 175, slip op. at 2, n.6 (2018), based on her conclusion that the Union demonstrated the relevance of (or, in the ALJ's words, "need" for) the requested contract. Respondent cited those cases in support of the argument that a union generally is not entitled to a copy of an employer's customer contract. And the ALJ does not seem to contest that statement of Board law. (*See* ALJD at 7-8, n.9 ("The Respondent also cites to *Station GVR Acquisition, LLC*, 366 NLRB No. 175, slip op. at 2, fn. 6 (2018), but in that case the Board denied summary judgment to the General Counsel ***because the union's requests for contract agreements . . . did not seek presumptively relevant information***." (emphasis added).)

The ALJ, however, concludes that this case is different because "the Union has established a need" to review the contract, so it can determine whether Bechtel and Respondent are joint employers. But the issue is not whether a union "wants" or "needs" such information, or thinks that such information might make its role as bargaining representative easier or more effective. If such were the standard, a union generally would be entitled to almost any sort of information it wished to obtain from an employer, including customer contracts, information about profit/margin, etc., and which would constitute substantially more information than the law provides.

The legal issue is not whether a union "wants" or "needs" the requested information, but whether the information is "relevant" under the applicable analysis. In order to demonstrate the

relevance of information about the possible joint employer, single employer or alter ego relationship between an employer and a third party, a union must have an "objective factual basis for believing" that such a relationship exists. *See, e.g. Consolidation Coal Co.*, 307 NLRB 69, 72 (1992) (citation omitted).

By way of illustration, the administrative law judge in *DMS Facility Services* explained how a union in a similar situation failed to meet the burden of overcoming the presumption that it was not entitled to information about the relationship between the employer and another entity:

> Board law is clear that a union must generally establish the relevancy of information regarding single, joint employer or alter ego relationships in which an employer is involved. While the Union is not required to prove the existence of such a relationship, the union must have an "objective factual basis for believing" that the relationship exists. *Consolidation Coal Co.*, 307 NLRB 69, 72 (1992) (citing *Bohemia, Inc.*, 272 NLRB 1128 (1984), *Maben Energy Corp.*, 295 NLRB 149 (1989)). See also *Shoppers Food Warehouse.*, 315 NLRB 258; *Knappton Maritime Corp.*, 292 NLRB 236 (1988); *M. Scher & Son*, 286 NLRB 688 (1987); *Walter N. Yoder & Sons v. NLRB*, 754 F.2d 531, 536 (4th Cir. 1985), enfg. 270 NLRB 652 (1984). Where, for example, a union is informed that certain of its members will be paid by an outside entity for their participation in a new training program, the Board has found the union entitled to information that would shed light on the identity of that third party and whether, in fact, it would have the right to direct the work of the Unit employees. See *Olean General Hospital*, 363 NLRB No. 62, slip op. at 3 (2015). In this case, however, there is no indication that Local 501, at the time it requested the customer contracts and lists, had an objective factual basis for its concerns regarding control by property managers over the terms and conditions of employment of the Unit employees. While the General Counsel presented the testimony of a one-time DMS employee concerning his interaction with customers' property managers (and corresponding lack of interaction with DMS managers), there was no showing that any of his observations were known or considered by the Union in formulating its information requests. Likewise, although Ulloa testified that he was aware of a DMS employee whose wage rate had been changed at the request of a property manager, there is no evidence that he knew and considered this when making the Union's information request. Instead, the evidence shows that, at the time of its information request, the Union's basis for believing that Respondent's customers may control terms and conditions of employment for Unit employees was limited to Ulloa's understanding regarding the operation of industry in which Respondent operates. Likewise, its basis for believing that Respondent's customer contracts

> might reserve such control to Respondent's customers is based on Ulloa's belief that property owners and building managers, throughout the industry, sometimes included such reservations in their contracts. ***But this is the sort of mere suspicion that, alone, does not suffice to support a request for non-presumptively relevant information.*** *Anchor Motor Freight*, 296 NLRB 944, 948 (1989) (citation omitted). Likewise, Ulloa's suspicions that Respondent's customer contracts could potentially be used as a basis on which to discipline Unit employees is, "at best . . . a hypothetical theory" insufficient to entitle the Union to these documents. Id. Accordingly, I find that, with respect to the recognized locations, Respondent's customer contracts and lists have not been shown to be relevant and necessary to Local 501's performance of its duties as the exclusive collective-bargaining representative of its members.

Case 31-CA-151920, JD (SF)-21-16, slip op. at 13-14 (March 18, 2016) (emphasis added).

In the case at bar, it would appear the Union has a "suspicion" that Bechtel and Respondent are joint employers. However, nothing that took place in Case 19-CA-191814, (at least not anything that is part of the record in this case), converts the Union's mere suspicion in this case to anything more. The Union presumably had a suspicion that Bechtel and Securitas were joint employers and, therefore, filed a charge in which that relationship was alleged. But there was never any admission or adjudicatory finding in that case that a joint employer relationship existed. And, even if there had been, at least as far as Respondent is aware, there are no Board decisions holding that any such finding relative to a predecessor employer automatically elevates a union's "mere suspicion" that a successor employer and the customer are a joint employer to something higher that would meet the legal standard for justifying a union's right to such information. Further, there is no record evidence in this case of any objective basis on which the Union had more than a "mere suspicion" that Respondent and Bechtel were joint employers. Therefore, the ALJ erroneously concluded that the Union established its "need" for or relevance of the requested customer contract.

Exception No. 9:

The ALJ erred when she concluded that "the Union has established relevance [of the contract because the] request was aimed at determining whether there was such a potential relationship or whether the contract otherwise covered terms and conditions of employment like the contract with Respondent's predecessor did." (ALJD at 8, lines 7, 10-12 (citations omitted).)

Argument in Support:

The issue is not the Union's motivation for wishing to see the customer contract, but whether the Union met the legal standard for overcoming the presumption that it is not entitled to such information. As explained in detail above, in deciding whether the Union is entitled to the requested information in this case, the question is not what information to which the Union might have been entitled regarding the relationship between ***Securitas*** and Bechtel in Case 19-CA-191814, but whether the Union should be permitted to engage in a "fishing expedition" into the relationship between ***G4S*** and Bechtel in this case. There are no facts in this case to support the conclusion that the Union had sufficient evidence to justify its entitlement to G4S's contract with Bechtel, merely because G4S was the successor to Securitas.

Exception No. 10:

The ALJ erred when she concluded that the Union in this case was entitled to the customer contract because "d[etermining the appropriate entities for bargaining is certainly relevant and necessary to the union's proper performance of its statutory duties and responsibilities." (ALJD at 8, lines 15-16 (citation omitted).)

Argument in Support:

Respondent does not question or dispute the Union's right to attempt to make such a determination. But the issue is not whether the Union might "want" or "desire" the requested information, or whether the requested information might make it easier for the Union to "do its job," but whether Respondent is obligated to provide a copy of its customer contract to aid the Union in such a determination. As explained above, the Union has not overcome the presumption that the requested customer contract is not relevant in this case. As such, the Union is not entitled to the requested information to assist it in determining the appropriate entities for bargaining. Again, if the Union in this case is entitled to such information, then so is every other union with a "need" or "desire" to determine whether an employer's customer is an appropriate bargaining entity.

Exception No. 11:

The ALJ erred when she concluded that, "Based on the foregoing, I find the Union provided the Respondent with an objective factual basis for believing that contract between the Respondent and Bechtel was potentially relevant for the Union to meet its bargaining obligations. Accordingly, I find the General Counsel has met her burden to prove this complaint allegation." (ALJD at 8, lines 20-24.)

Argument in Support:

As explained in detail above, there is a presumption that information such as a customer contract is not relevant and, therefore, an employer is not obligated to provide it to a union upon request. The burden is on a union to overcome that presumption. The Union is this case did not

overcome that presumption and, as such, the General Counsel did not meet her burden to prove the complaint allegation that Respondent violated the Act by refusing to provide the Union with a copy of its contract with Bechtel. As such, the ALJ's conclusion to the contrary is erroneous.

Exception No. 12:

The ALJ erred when she concluded that the Respondent violated the Act by refusing to provide any of the requested financial information because the "board has consistently held that the Act does not permit an employer simply to refuse to respond to an ambiguous or overbroad request, but rather requires the employer to request a clarification, or to comply to the extent the request for information clearly asks for necessary and relevant information." (ALJD at 8, lines 32-35 (citations omitted).)

Argument in Support:

The ALJ seeks to place a heavy burden on the Respondent in this case. In the middle of an ongoing exchange over the Union's request for Respondent's contract with Bechtel, the Union casually tossed in a vague and broad request for "all information concerning the cost of running the [Bechtel] contract, including but not limited to wages, benefits, overhead, etc." (Jt. Exh. E, May 20 email.) In this context, Respondent believed the request was focused on financial aspects of Respondent's contract with Bechtel such as overhead costs. As such, Respondent responded by explaining that it did not believe the Union was entitled to any of the requested information -- the customer contract and communications between Respondent and Bechtel, as well as financial information -- and provided the Union the opportunity present it with further information in support of its belief that it was entitled to the information, and offered to review the request again in light of any such further information provided. (Jt. Exh. E, May 21 email.)

While Respondent did not use any "magic words" that asked the Union to clarify, narrow or otherwise explain precisely the nature of the financial information sought by the Union, it undisputedly provided the Union the opportunity to do so. (*Id.*) There is no record evidence that the Union ***ever*** attempted to clarify, narrow or otherwise explain the specific, financial information it sought. Yet the ALJ would require Respondent either to use some "magic words" in its response to the Union to satisfy its legal obligation (and apparently thereby help educate the Union on how to make an appropriate information request for the type of financial information to which it might be entitled), and/or sift through the Union's vague and broad request and determine for itself what information to which the Union might be entitled, and then provide it, regardless of whether it was the information actually sought by the Union.

Respondent does not dispute that it would be required to provide information such as the bargaining unit members' wage rates or Respondent's total cost for benefits provided to bargaining unit members, such as health insurance. But Respondent does not believe it is obligated to guess if that is the specific information sought by the Union in its broad request for financial information, most of which would fall in categories that the ALJ seems to concede would ***not*** be information to which the Union is entitled, such as, perhaps, profit, salaries of management and administrative personnel with oversight over this contract, rent for the Respondent's local and corporate offices that provide management and support services in connection with this contract, etc.

Even though Respondent concedes above the type of information to which the Union would be entitled upon request, the ALJ still erred by concluding that Respondent violated the Act by refusing to voluntarily provide such information to the Union in this case. Because of the

underlying context and the Union's failure ever to offer any sort of clarification or narrowing of its request for financial information, Respondent's refusal to provide any responsive information was lawful.

Exception No. 13:

The ALJ erred when she concluded that "the information requested [regarding communications with Bechtel about post transfers, discipline, negative reviews, etc.] concerns the terms and conditions of the union employees and is therefore presumptively relevant." (ALJD at 9, lines 25-26.)

Argument in Support:

The ALJ acts as if any information that touches on employees is presumptively relevant. That is not accurate as a matter of law. The general standard is that "information pertaining to employees in the bargaining unit" is presumptively relevant," *see, e.g. Disneyland Park*, 350 NLRB at 1257. Yet, despite the words used in that general standard, it is undisputed that not all information that concerns or impacts employees is "information ***pertaining to*** employees in the bargaining unit." *Id*. (emphasis added).

For example, as explained above, a union generally is not entitled to a copy of the employer's contract with its customer. *F.A. Bartlett Tree Expert Co.*, 316 NLRB at 1312-1313; *Station GVR Acquisition, LLC*, 366 NLRB No. 175, slip op. at 2, n.6. Without such contracts, especially in a contractor situation like the one in this case in which the bargaining unit employees are employed on the customer's property, the employer would not even be in a position to employ the employees. In other words, in the absence of such a contract, the contractor would not be performing the work that would necessitate employing the employees at

the customer's site. Yet, a union generally is not entitled to a copy of such a contract, even though it "pertains to" employees in the bargaining unit. Similarly, a union is not entitled to information such as the salaries paid to management personnel that oversee bargaining unit employees, presumably even though such information may be relevant to the quality of the managers who supervise the employees and, therefore, "pertains to" the employees. *See, e.g. North Star Steel Co.*, 347 NLRB 1364 (2006).

Thus, it is clear that a union is not entitled to any information just because it concerns or touches on the bargaining unit employees. Yet, that seems to be the ALJ's conclusion in this case. The Employer is not aware of any Board decisions in which the Board held that a union generally would be entitled to communications between an employer and the employer's customers. Nor does the ALJ cite to any such cases. Once again, the ALJ's conclusion regarding this information request would permit the Union to engage in a "fishing expedition" into the relationship between Respondent and Bechtel, even though the Union has failed to demonstrate the relevance of the requested information under the applicable legal standard. Therefore, the ALJ erroneously concluded that the Union demonstrated the relevance of the requested financial information.

Exception No. 14:

The ALJ erred when she stated that the "only real argument the Respondent makes it that this [request for Respondent's communications with its customer] was an end-run around getting at information in the Respondent's contract with Bechtel" and that, "[t]his is of no moment, other than perhaps as an implicit acknowledgement that the contract may contain information of potential relevance to the Union as the employees' bargaining unit." (ALJD at 9, lines 26-29.)

Argument in Support:

The ALJ mischaracterizes Respondent's argument on this issue. Respondent did not contend that the Union's request in this regard was some attempted end-around to get the same information that would be contained in the contract between Respondent and Bechtel. Nor did Respondent acknowledge, implicitly or otherwise, that any such communications might somehow confirm the customer contract would contain any such information.

Rather, Respondent argued that, just like the underlying customer contract on which such communications are based - since any such communications naturally flow out of the contractual relationship between the parties to that contract - an employer's communications with its customer are presumptively irrelevant just like the underlying contract. The Union never offered any justification to overcome the presumption that such information is not relevant to the bargaining unit. In fact, the Union never offered ***any*** justification of any sort for why it believed it was entitled to this information, other than the same general conclusory statements made regarding its belief as to why it was entitled to a copy of the customer contract. Once again, however, such conclusory statements - that a union needs or wants such information for effective bargaining - are not sufficient to overcome the general presumption of irrelevance. *See, e.g., Disneyland Park*, 350 NLRB at 1258 n.5 (2007) (citations omitted) ("union's explanation of relevance must be made with some precision; and a generalized, conclusory explanation is insufficient to trigger an obligation to supply information"); *F.A. Bartlett*, 316 NLRB at 1313 (citation omitted) ("The basis for this request, i.e., that the information contained in the contracts is necessary to make a reasonable wage proposal is nothing more than another way of saying that is needed 'to bargain intelligently' and this general claim is simply insufficient to establish

relevance."). Therefore, the ALJ's conclusion that Respondent unlawfully refused to provide the Union with its communications with Bechtel regarding Respondent's employees was erroneous.

Conclusion

Under the Act, an employer generally is not required to provide a union with a copy of its customer contract, communications between the employer and its customer regarding the employer's provision of services under such contract or the employer's financial information related to operating under such contract. The ALJ failed to identify any exception to this general rule that applies in this case. As such, Respondent's refusal to provide the information requested by the Union was lawful under the Act, and the ALJ incorrectly concluded otherwise.

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Certificate of Service

On April 19, 2019, the foregoing was filed electronically and a copy served by way of electronic mail on Stephanie Cottrell, Counsel for General Counsel, S.Nia.Cottrell@nlrb.gov; and Travis Brett, Charging Party, travis.brett.igua161@gmail.com.

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